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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-188

ROBERT I. CLAUSEN, H. B. SURKAMP and HADLEY P. STONNER,
Petitioners,

vs.

THE NORTHERN TRUST COMPANY, as Trustee,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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STATEMENT OF CASE

On February 15, 1971, following a foreclosure sale of the real estate given as security, Respondent sued Petitioners and others in the District Court for the balance due on a promissory note (Appendix, p. A-1).

Thereafter, Petitioners instituted cause No. 52,930 in the Circuit Court for Boone County, Missouri, to set aside

the foreclosure sale. This suit is now "pending" on a Third Amended Petition (Appendix, p. A-20).

On May 18, 1971, Petitioners filed a Motion to Stay Proceedings in the District Court until the state action was finally adjudicated (Appendix, p. A-3). In denying the Motion to Stay, the District Court found that the state action raised no novel questions of Missouri law (Appendix, p. A-14) and that the issues asserted by Petitioners in Cause No. 52,930 could have been raised as a counterclaim in the federal case (Appendix, p. A-19). Accordingly, Petitioners were granted leave to amend their Answers "so as to assert any counterclaims or defenses presently asserted in the state court action which they may wish to assert in this case" (Appendix, p. A-15).

The judgment of the Court of Appeals for the Eighth Circuit here involved was rendered after Petitioners had filed amended pleadings in the federal action incorporating in that case "their state court defenses and counterclaims" (Petition, p. 14).

ARGUMENT

There are no special or important reasons asserted by Petitioners to suggest that this Court in the exercise of sound discretion should review the judgment of the Court of Appeals of the Eighth Circuit.

The order of the District Court in refusing to stay the proceedings before it was clearly correct. **County of Allegheny v. Frank Mashuda Company**, 360 U. S. 185, 3 L. ed 2d 1163, 79 S. Ct. 1060, (1959).

The Judgment of the Eighth Circuit Court of Appeals dismissing the appeal from this discretionary order, after Petitioners had amended their pleadings and introduced into the federal case all issues sought to be raised by them in the state action, was equally well founded.

The considerations governing review on certiorari set forth in Supreme Court Rule 19 are not present in this case.

CONCLUSION

For the above reasons, Respondent respectfully submits that this Petition for Writ of Certiorari should be denied.

Respectfully submitted

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